183
181 The Bambara has a very highly developed sense of this idea of justice and there is nothing he resents more than injustice or a denial of justice. His resentment is stubborn and his vengeance, which may be deferred under a show of indifference, is implacable. The chronicle of Ségou is rich in pertinent examples. There was Ngolo Dyara, bringing murder and disaster on his own relatives in order to satisfy his hatred for having been sold into slavery by his uncle and not ransomed by any of his relatives. There was Kégné Mari who, watching the murder of Touro-koro in the Komo wood, expressed his vengeance finally fulfilled by saying: "Remember how, falsely accusing me of adultery with one of your wives, you had me lashed? And how on that day I told you that even though I were lying on the ground, if I could touch you with my foot, I would lay you low? Here at last is the day of my vengeance!" Similar examples are innumerable.

If he is powerless against injustice, the Bambara will wait patiently and, each time he has to speak, will dissimulate his weakness in formulas which have a double meaning, such as
[195] O do!, meaning "That's it!" O nya-na, meaning "Oh well!" Tigi!, meaning "That's true"; and other similar expressions. At the same time, he is repeating to himself his proverb: don' m'i fantan', a bla k'a teme, meaning "Don't pay attention while you are weak," that is, "Wait until I am strong enough to take vengeance (lit., to pay you back)."

This instinctive feeling for justice accounts, in a certain
181 measure, for the family bonds made up of reciprocal rights [131]
571 and duties between parents and between them and their children
626 and, by an analogy of which we shall see other examples, between master and slave and between chief and subject. The obligation to respect all pacts concluded in the form of vows, oaths or fraternal alliance rests on the same basis. And it is the same notion that inspires the repression of acts which are almost universally condemned: perjury, treason, false witness, slander,
[691] theft and murder. It sustains the tireless persistence of the pleader who will go through endless lawsuits to obtain redress for a wrong done to him or to one of his people. And it gives strength to public vengeance against the sorcerer.

794 [787] Furthermore, every wara-mina-den' is able to read the will of the Nya and, more generally, to reveal the acts of the invisible by means of the divination practices which we have already mentioned.

[782] The sacrifices are performed by the muru-kala-tigi, and a dyeli (herald) serves as factotum, just as in the other brotherhoods. [285]

794 796 The faithful are initiated and called to participate in the cult to an extent determined by the clergy; they are called Nya-ko-den'-u, literally, "those who follow the Nya." In order to be admitted, an individual must give a chicken and 120 cowries. The next day, in the presence of the Nya-tigi and the wara-mina-den', the chicken is sacrificed on the boli by the muru-kala-tigi. The candidate is present, and in his behalf the Nya-tigi asks the Nya for protection against the suba, snakes, korti, and the evil eye. Then the neophyte is led to the sacred grove to be ritually purified with consecrated water contained in a vessel used exclusively for this purpose (1).

[783] 1. Every year at the time of harvest, the clergy undergoes ritual purification by washing in the sacred water. When a Nya is inaugurated, this purification takes place at the first harvest after the installation.

[731] The two great annual festivals are celebrated at the times of planting and harvesting. Similar ceremonies take place in connection with important events (epidemics, public catastrophes, etc.). For these ceremonies, during which the Nya is supposed to give revelations about the event in question and to answer various other questions troubling the faithful, the wara-mina-den' [273] undergo special preparation and at the proper time drink a very heady beverage (2) which, they say, brings on their extra-lucidity.

[691] 2. I learned most of these details about the Nya during a criminal trial brought against the wara-mina-den' of Soun-Bambara,

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[691]

near Djenné. The son of the chief of that village drank the special liquid, in spite of the fact that the wara-mina-den' had told him not to do so, and died. The latter was accused of having poisoned him, but when he explained the circumstances before the native tribunal, he was acquitted.

It is said that this drink is made by soaking any sort of root found while digging graves and seasoning it with pepper, salt, and red peppers. The beverage, which is highly intoxicating, is ritually consecrated.

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796 Excited by this beverage and by the songs and dances of a crowd which is itself warmed with drink, the wara-mina-den' during major festivals acts as a visionary who freely reveals the will and desires of the god. On the evening before these important ceremonies and for several evenings before that, all the clergy and their aides meet for a kind of rehearsal of the dances and songs. It is then that the young men prepare for the major roles they will later play. The [286] wara-mina-den' is particularly concerned with the training of the man who will replace him in case of need.

There is nothing of special interest to note about the brotherhood's treasury, which is acquired and appropriated just as in other brotherhoods. The political action of the Nya and its relations with the communities are also such that they require no special attention. [287]

Chapter 5

The Clans

1. General Considerations

631 ~~It~~ is usual to use the word "empire" or "kingdom" to describe the form of government of most of the Sudanese states and particularly those founded in Kaarta and Ségou by the

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692 JUDICIAL AUTHORITY--extent to which the settlement of disputes, redress of injuries, and application of sanctions is withdrawn from the parties concerned and vested in some constituted authority; degree of identification or separation of judicial and executive authority; specialized judges and courts; judicial system (e.g., courts of original and appellate jurisdiction, courts of law and equity, civil and criminal courts); jurisdiction of each type of court; judicial powers and prerogatives; etc. See also:

Judicial authority of executive and administrative officials 63, 64
Concept of justice 677
Informal justice within the community 627
Constitution 642
Legal norms 671
Special courts 699

621 (den'). Proof of this is seen in the fact that any important hap-
622 pening in a native's life is supposed to be reported to the dugu-tigi and in certain cases requires an offering or, as it is called, homage (bunya). We have seen this in the case of birth, giving a name, circumcision, marriage, and death. It is no less essential in cases of public disaster (epidemic, persistent drought, invasion, war).

621 In theory, the dugu-tigi does not intervene of his own
622 accord in the private affairs of the patriarchal or familial com-
692 munities which, when taken together, constitute the territorial unit we usually call a village (1). When a quarrel between rela-

> 1. The territorial community among the Bambara is called dugu, a term which at the same time means "land" and "among," "to," "within," etc., and which is preceded by a name recalling some circumstance involved with the founding of the village.

tives cannot be settled by the fa concerned, however, he asks for the intervention of the dugu-tigi and his council. If dissension arises between the people of different communities, the same arbitration is usually requested. As a result, a kind of tribunal of conciliation has evolved, which can only suggest what the parties should do or refrain from doing in order to put an end to the dispute. Theoretically, the dugu-tigi has no right to enforce the [232] verdict (1), because the communities are

> 1. That is why litigation may be indefinitely prolonged.

extremely jealous of their independence. As a consequence, they yield only to the extent that is in their best interests.

It may happen, however, that the dugu-tigi, supported by his council, does exert authority when he has the power and is seconded by notables who make common cause with him for

621 various reasons. Thus, the dugu-tigi in council can invoke
622 police powers to maintain order in the community and even act
692 as a tribunal to punish those whose misdeeds in any way endanger the persons or property of members of the community.

621 Since the genie is expected to ensure the prosperity of
622 the faithful, it is the duty of the dugu-tigi to come to the assist-
[735] ance of members of the community who are unfortunate or indigent.

He must also maintain the relations of his community with the outside world, that is, with neighboring territorial communities and all other groupings, analogous or otherwise. He can act independently only in matters which we call purely administrative; for other matters he must have the assent of the council of fa, above all for any matter involving the disposal of community property.

621 It is obvious that all the roles of the dugu-tigi involve
622 expenses that are often considerable, but for this purpose he has
651 access to goods from many sources. In the first place, offerings made to the nyana are of various kinds; they are not always consumable, and even if they are, they are usually consumed only in part. The remainder belongs to the dugu-tigi. It is customary to give bunya (gifts of homage) to the dugu-tigi on many occasions: a hunt, a fishing expedition, millet harvest, etc.; to thank him for an allotment of land, or for some other service. Community property is farmed out for fees payable at fixed times, and tribute is paid in the same way. Most of the various kinds of infractions committed within the community are punished by fines received by the dugu-tigi. Incorrigible malefactors become slaves of the community, and the produce of their labors [233] goes to the dugu-tigi. Anything found abandoned on land belonging to the community is turned over to the dugu-tigi, in whole or in part.

In case of need arising through some exceptional emergency (war, an expedition, public works of various kinds, etc.), the dugu-tigi may have recourse to what we should call an emergency assessment, i.e., he may ask the members of the community for special contributions for the purpose.

241 462 [411] [401] After the men have cleared the big weeds, the women come along to finish up. At harvest time, the women and children chase the birds from the fields with loud cries, sling shots, and by heating bamboo on a hard rock to cause a detonation. All chase the sparrows, partridges, guinea-fowls ... Harvesting is done together ...

In addition, by the side of the men's fields there are little women's fields where the women cultivate sorrel, okra, eggplant, tomatoes, beans, and all the condiments. The accessory crops of the women are the raro, bananas, manioc, sometimes rice or peanuts (1).

1. Labouret, Paysans noirs [Black Peasants].

241 565 567 Naturally, the work varies according to the social order. The Bambara divide themselves into free men, people of caste, and, formerly, slaves, all having a chief at their head. All members of the community must work the land; in fact, the poor work more than the slaves. The more fortunate do little work; they formerly directed and controlled the work of the slaves, today that of the agricultural workers.

C. Legal Procedure: Inheritance, Land Ownership

692 In Bambara country today, as in all of French West Africa, justice is dispensed by two tribunals: that presided over by a justice of the peace for important affairs, and that presided over by the administrator for other cases. The justice of the peace renders justice following the French code; the administrator according to local custom. A chamber of the Court of Appeals of Dakar is represented at Bamako, whose jurisdiction includes the Sudan and Niger territories. The Assize Court holds a session at Bamako, which also possesses an inferior court. Justices of the peace of wide jurisdiction are found at Kayes, Gao, Mopti, Ségou, Sikasso, Bougouni; other justices of the peace with wide jurisdiction have been created and will soon take up their functions.

One easily imagines the conflicts of principles and method which may arise between the two sorts of tribunals have just indicated.

692 In matters of justice, the Bambara frequently continue to consult their old tribal judges. It must be noted, however, that in taking [177 away the judicial competence of the old chiefs, the French ad- 622] ministration has contributed to diminishing, and almost to completely destroying, their power.

The Bambara had a judicial organization quite as precise and 671 regulated as their religious organization, although there was no codified law, such as the Koran or the Hebrew tables of law. Justice was rendered according to rules which each community passed on from generation to generation. These rules are not of divine origin, but they [69] are sacred nevertheless, for custom is the legacy of [643 the ancestors. The Fama and his council of notables could promul- 645] gate new laws, but, before deciding on a new rule, they consult the Komo and the Nyama [an altar]. Then, in the presence of a priest, each one swears on the altar to obey the law which becomes sacred. Moreover, the customary rules cannot be separated from the moral [184] code and the religion to which they are linked. They are not uniform; each canton has its own, and often each village, and within each of these there are observances peculiar to certain families or to certain castes. Nevertheless, the sentiment of fair play is very strong [181] among the Blacks, but they do not admit the equality of men, who are naturally different one from another according to their aptitudes, means, and condition.

Custom regulates all relations between individuals and between individuals and the collectivity.

692 Two sorts of native tribunals existed in the Bambara country: a tribunal of conciliation, presided over by the village chief, who assembled a council of notables; and a high tribunal presided over by the Fama, to whom were submitted the matters which the first tribunal had been unable to settle. In addition, the Fama could call before his tribunal the civil or penal matters which seemed to him to be of importance to the public order.

695 Justice was without charge and rendered day and night by the 643 Fama as one of his essential functions, for the judge is the one who repairs the disorders that shake society. The hearings were solemnly conducted and took place under the silk-cotton tree (Ceiba pentandra)

689 Public violation of decency is punished by death.

684 For adultery, the man is put in irons and pays a fine, the woman is whipped by her husband, her brothers, or the Fama's police. Relations with a woman in mourning draws public scorn on the guilty, while a man who commits adultery with a pregnant woman is put to death. A captive who is the lover of his master's wife is put to death.

689 Vagrant individuals are presumed to be escaped captives and are handed over to the Fama.

735 Finally, begging is authorized, because, say the Bambara, it is better to have begging than stealing.

d. Responsibility

[608] The Fama judges all his subjects, except his own sénanku whom he has judged by his tribunal. The law is applicable to every circumcised man and excised woman recognized as sane. (The demented are put in irons.) They are responsible for their acts, but the family of the guilty is also responsible. The father of an uncircumcised boy is responsible for the boy's acts, the husband for the acts of his wife, and we have seen that a man's crime may lead to the punishment of his whole family. Let us further remark that a master was judge of his slave, but when a difference arose between slaves of different houses, their case was referred to the tribunal. The tribunal also weighed the death penalty [72] when a slave committed a grave fault. Finally, the foreigner who lives in the Bambara country is judged by Bambara laws.

672 We must also note that the penalties apply to all crimes committed voluntarily; every infraction or damage involuntarily committed is excusable on the condition that it be immediately confessed. Thus it is that a hunter meeting a pair of lovers in the bush may kill them for outraging public decency, but must admit his crime immediately upon returning to the village.

567 692 [609] 672 [684]

e. Inheritance

428 Monteil has noticed an order of succession in the Ségou region which does not correspond to that described by other authors, such as Ortoli or Aubert. In fact, at the death of the fa, " ... everything that belonged to him remains undivided under the new faya of